

REMARKS

This amendment is in response to the Office Action mailed October 21, 2005. The undersigned attorney for the applicant believes that it follows the suggestions made by the Examiner in that Action and also in the telephone interview between the Examiner and applicant's attorney on October 27, 2005. Applicant's attorney is very grateful for those suggestions, all of which related to conforming the applicant's amendment mailed on August 9, 2005 to the requirements and format prescribed by 37 CFR 1.121.

Accordingly, only the claim listing required by 37 CFR 1.121 using the prescribed status identifiers appears under the Amendments to the Claims heading. The clean version of each of the three pending claims, as they stood prior to the present amendment, has been deleted. In the three claims which are pending, Nos. 1, 8 and 9, the added amendatory language is underlined and the deleted language is stricken through if greater than five consecutive characters or enclosed in double brackets if less than that.

Finally, in the paragraphs of these Remarks which immediately follow, the paragraphs from the Remarks portion of the Amendment mailed August 9, 2005 have been repeated. That repetition is at the Examiner's suggestion in order to roll the amended claim language and the applicant's attorney's views into a unitary presentation.

In the Office Action mailed May 9, 2005, claims 1, 8 and 9, the only claims which are pending, were rejected under 35 USC §112 and also under 35 USC §102(b). The

Examiner identified various terms as being indefinite, and he found that the claims were broadly anticipated by the patent to Jacoby et al. No. 4,088,209.

With respect to the various terms identified under §112, all of them have been revised in this amendment. Applicant is grateful to the Examiner for his comments, which have led, applicant believes, to improvement in the form of the claims.

With respect to the rejection on Jacoby et al., applicant disagrees with the Examiner but is grateful for his search efforts and his observations on this issue, too. In the following paragraphs, the very substantial differences between the applicant's invention and Jacoby's will be described.

In the May 9th Office Action the Examiner asserted that "claim 1 broadly reads on Jacoby et al." and then, applying the applicant's claim 1, contended that the patent shows "a barrier (Fig. 5 for example) having contiguous front and rear portions defining a certain size interior enclosure...." Actually, the Examiner stated the applicant's claim 1 too broadly. That claim calls for "a barrier adapted to be positioned horizontally around and spaced away from all sides of the post providing a space between said barrier and the post...." (emphasis added). Applicant's plan view makes the spacing evident. Notably, this is a positively recited configuration, and it is not present in any way in the patent.

In fact, Jacoby et al. teaches that the sides of the gusset plates 45 and 46 lie up against the column assembly 17 where they are welded in place (column 3, line 63,

through column 4, line 4). There is no space between the gusset plates and the post. The welds make the plates and the post into a unit and they cannot move independently of one another.

Applicant's claim 1 also refers to his barrier as having "contiguous front and rear portions defining a certain size interior enclosure adapted to enclose the post and provide said complete spacing of said barrier away from the post...." This is also a positive recital which the Jacoby et al. patent cannot meet, and teaches against.

The Examiner further describes the Jacoby et al. patent as "also having resistively flexible oblique vertical bends (45a, 46a, 47 for example) between front panel portion and the respective rear support portions adjacent extended side support portions." However, this isn't accurate. Element 45a is not a vertical bend; it is a "front deflector flange" (column 3, line 33). So is the element 46a (see column 3, lines 36 and 37). The element 47 is a "welded corner" (column 3, line 39). There is no suggestion in the patent that the welded corner bends; in fact, the weld fixes the deflector flanges in place. If it were bent, the weldment would break, and the object of the patent to keep the plates fixed in relation to each other would be defeated.

The Jacoby et al. patent is even further distinguishable. The Examiner urges that claim 1 reads on the patented structure as follows: "the barrier [in the patent] also having securing means (35a) interior thereto and adjacent barrier extended rear

portion and the post.” This isn’t really true. In the patent 35a is a mounting bolt hole” (column 3, line 40) in the base plate 35 which “underlies the column assembly 17” (column 2, line 66), but it is forward of the post, not in the rear. The rear segments of the patented assembly do not work against any identifiable securing means, much less to any such means “interior” to the barrier.

In short, the Examiner’s conclusion that Jacoby et al. anticipates the elements stated in applicant’s claim 1 cannot be supported.

Applicant’s claim 8, in view of the fact that it depends from claim 1, requires little discussion. As pointed out above, applicant’s invention covered by applicant’s claim 1 is quite different from the invention covered by the patent, and claim 8 merely adds a limitation to claim 1.

With respect to the Examiner’s rejection of applicant’s claim 9, he first argues in the Office Action that the vertical members 45c and 45b are integrally connected to each other and are “disposed substantially around and spaced apart from the post 17.” However, as pointed out above, the connecting parts of gusset plate 45 between the front deflector flange 45c and rear deflector flange 45b are welded to column 17, not “spaced apart” from it as the Examiner asserts.

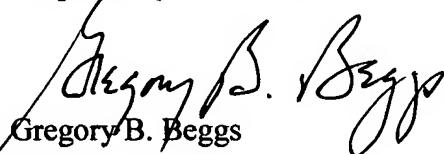
As also pointed out above, applicant’s protector includes “flexible bending elements” (claim 9, line 10). No such elements are shown in the patent. The angular

junction of the segments in front of the post in the patent is a weldment which doesn't bend (see column 3, line 39).

In applicant's claim 9, spacing and bending are positively stated. These relationships do not appear or happen in the patent.

As the Examiner can see, a serious effort has been made to clarify and improve the language of claims 1, 8 and 9. Applicant respectfully asks that the Examiner review these amendments critically, particularly in light of the distinctions offered above. A favorable action is requested.

Respectfully submitted,


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